United States Court of Appeals for the Second Circuit



APPENDIX

Docket 76-5027 No. 76-5027

In The

United States Court of Appeals

For the Second Circuit

In the Matter of

Chili Heights Associates,

Debtor,

CENTRAL TRUST COMPANY ROCHESTER N.Y.,

Appellant,

- vs -

JEROME C. ROSENTHAL, LEONARD MORRIS, ELIZA-BETH BAUER, JOSEPH FAZIO, LEONARD ZACCAGLINO, and FRANK RIZZO,

Appellees

On Appeal From the Decision and Order of The United States
District Court for the Western District of New York
BK-75-4635

APPENDIX

WOODS, OVIATT, GILMAN, STURMAN & CLARKE Attorneys for Appellant, Central Trust Company Rochester N.Y. Office and P.O. Address 44 Exchange Street Rochester, New York 14614 Telephone (716) 454-5370 PAGINATION AS IN OPIGINAL COPY

TABLE OF CONTENTS TO APPENDIX

		Fag	e
1.	Relevant docket entries in proceeding below	A-	3
2.	Chili Heights Associates Petition under Chapter XII of the Bankruptcy Act	A-	9
3.	Order Staying Suits, issued by Bankruptcy Judge, January 5, 1976	A-	10
4.	Modified Order Staying Suits, issued by Bankruptcy Judge, January 29, 1976	A-	11
5.	Order Granting Temporary Stay, issued by United States District Judge, February 5, 1976	A-	13
6.	Order to Show Cause, issued by United States District Judge, March 1, 1976, including annexed application of William K. Shea and Exhibits	A-	14
7.	Order and Decision of United States District' Judge, April 26, 1976, reversing January 29, 1976 Order of Bankruptcy Judge	A-	38
8.	Order and Decision of United States District Judge, May 10, 1976, determining the March 1, 1976 Order to Show Cause	A-	41
9.	Order to Show Cause of United States District Judge, May 26, 1976, requiring Central Trust Company Rochester N.Y. to show cause why state court judgments should not		
	he vacated	75	11

		Page
10.	Affidavit of Paul S. Groschadl, Esq. with Exhibits, May 28, 1976, in opposition to May 26, 1976 Order to Show Cause	A- 4
		Λ 4
11.	Official Transcript of Proceeding had in this matter on June 1, 1976.	A- 66
12.	Order and Decision of United States District Judge, July 21, 1976, vacating and nullifying sixteen judgments entered by Central Trust Company Rochester N.Y. on May 13,	
	1976	2 86

RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW.

* * *

Name of Bankrupt /Debtor CHILI HEIGHTS ASSOCIATES d/b/a AS A PARTNERSHIP

ID # 16-1040381

* * * *

DATE PROCEEDINGS

12/31/75 Filed Petition and Schedules. Copies sent to District Director of I.R.S. and Secretary of the Treasury

1976

2/6/76

Filed Order granting temporary stay
from suits against Jerome C. Rosenthal,
Leonard Morris, Elizabeth Bauer, Joseph
Fazio, Leonard Zaccaglino, Frank Rizzo
until the appeal of the 1/29/76 Order
of Judge Hayes is heard and determined.Burke,DJ

2/27/76 Filed Appeal to District Court. - file transmitted to Judge Burke

3/2/76 Filed Order to Show Cause why Order filed on 2/6/76 should not be modified so as to vacate the 3rd and final paragraph, etc. and ordered that Central Trust Co. is authorized to proceed in Supreme Court with its Actions upon the demand note of Jerome C. Rosenthal,

RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW.

et al. ret. 3/8/76 - Burke, DJ-sent to Rochester

- 3/8/76 Submitted for decision now
- 3/9/76 Filed Decision setting date for Hearing on appeal ret. 3/22/76 at 2:00 p.m. Burke,DJ
- 3/8/76 Filed in Rochester, Debtor's affidavit in opposition to motion to release Central Trust from terms of stay order.
- 3/16/76 Filed Order authorizing Central Trust to proceed in Supreme Court with its actions against the demand notes of Jerome Rosenthal, et al.-Burke,DJ
- 3/22/76 Hearing on appeal. To be submitted 3/29/76
- 4/28/76 Filed decision that the modified order of 1/29/76 appealed from is reversed. The order of 1/5/76 is re-instated. Burke,J.

RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW.

- 5/7/76 Filed notice of Appeal of Lincoln First

 Bank of Rochester (copy mailed 5/10/76 to

 Salamone & Aloi, Messrs. Bornstein, Fox,

 Ryen and Ninfo, and to Woods, Oviatt, etc.

 and to the Clerk, CCA with copies of doc
 ket entries; CCA's Forms C and D mailed to

 Mr. Thomas) Notice of Request for Designation of Record on Appeal filed under

 same cover
- 5/12/76 Filed Decision and Order vacating order
 filed 3/2/76 which authorized Central Trust
 Co. to proceed in Monroe County Supreme
 Court.-Burke,DJ
- 5/25/76 Filed Notice of Appeal of Security Trust
 Company of Rochester (copy mailed to
 Salamone & Aloi, Messrs. Thomas, Bornstein, Ryen and Ninfo, and to Woods,
 Oviatt, etc., and to the Clerk, CCA with
 copy of docket entries; CCA's Forms C and
 D mailed to Mr. Fox)
- 5/27/76 Filed Decision and Order to Show Cause
 why judgment against Jerome C. Rosenthal,
 et al filed subsequent to the Order dated
 5/10/76 should not be vacated, returnable
 6/1/76.-Burke,DJ

RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW.

- 6/23/76 Filed Affidavit in opposition to vacate judgments-submitted by Central Trust Co.
- 7/23/76 Filed Order vacating judgments against Jerome C. Rosenthal, et al which were entered by Central Trust Co.-Burke,DJ
- 7/28/76 Filed Order to Show Cause for stay pending appeal, etc. 9/13/76.-Burke,DJ
- 7/28/76 Filed Order granting temporary stay of
 Court Order dated July 21, 1976.-Burke,
 DJ
- 7/27/76 Filed Notice of Appeal of Central Trust
 Company (copy mailed to Mr. Bornstein,
 and Salamone & Aloi and to Clerk, CCA
 with copy of docket entries; CCA's Forms
 C and D mailed to Mr. Amendola)
- 8/2/76 Filed Order extending the temporary stay of Order dated 7/21/76, which stay was granted 7/27/76, until decision of CCA on application of Central Trust Company for a permanent stay pending appeal-Burke,DJ

RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW.

- 8/11/76 Filed Central Trust Company's Notice of
 Request for Designation of parts of record
 in connection with its application for a
 stay pending appeal, pursuant to Rule 8,
 F.R.A.P.
- 8/11/76 Filed letter dated 8/10/76 from attorneys for Appellant, Central Trust Co., transmitting check for \$250 and with Judge Curtin's notation thereon authorizing filing in lieu of bond
- 8/13/76 Pertinent papers, docket entries and Clerk's certificate mailed to CCA pursuant to Rule 8, F.R.A.P. re application of Central Trust Company for a stay pending appeal
- 8/17/76 Filed Court Reporter's transcript of proceedings 6/1/76
- 8/17/76 Transcript of proceedings of 6/1/76 and supplemental Clerk's certificate mailed to Clerk, CCA

RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW.

- 9/1/76 Filed motion by Central Trust for stay pending appeal returnable 9/13/76
- 9/1/76 Filed Appellant Central Trust Co., Notice of Request for Designation of Record on Appear F.R.A.P. Rule 10
- 9/7/76 Original pertinent papers, Clerk's certificate and docket entries mailed to Clerk,

CHILI HEIGHTS ASSOCIATES PETITION UNDER CHAPTER All OF THE BANKRUPTCY ACT.

ORIGINAL PLTITION UNDER CHAPTER XII UNITED STATES DISTRICT COURT

for the Western

District of New York

In re:

CHILL HEIGHTS, ASSOCIATES D/B/A AS A PARTNERSHIP

REAL ESTATE ARRANGEMENT Bankrupley Nd.5 4635

PETITION

- 1. Petitioner's post office address is 372 Saxton Street, Rochester, Monroe County, New York 14606.
- 2. Petitioner has had its principal place of business within this district for the preceding 6 months.
- 3. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.
- 4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XII of the Act.
 - 5. Petitioner is unable to pay its debts as they mature.
- 6. Petitioner intends to file a plan pursuant to Chapter XII of the Act.

WHEREFORE, Petitioner prays for relief in accordance with Chapter XII of the Act, together with an order as debtor in posses sion.

ATTEST: A TRUE COPY

Fr. TO D. HATES

Une Louising

Original filed _ /3 1/2

SALAMONE & ALOL Donald A. Salamone

a partnership

SALAMONE & ALOI Attorneys for Petitioner 601 Executive Office Building Rochester, New York) 14614

Prank Rizzo As an authorized agent and member of Chili Heights Associates,

STATE OF NEW YORK) COUNTY OF MONROE) ss:

1, FRANK RIZZO, I member of the partnership named as Peti-tioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my know-ledge, information, and belief, and that the filing of this Petitio on behalf of the partnership has been authorized.

Frank Rizzo

Sworn to before me this 30th day of December, 1975

> Alana E BOWALD & See ASSORTS HITTAGE THE THE CHARLES OF THE

BEST COPY AVAILABLE

A10

ORDER STAYING SUITS, issued by Bankruptcy Judge, 1-5-76.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter of

IN PROCEEDINGS FOR REAL ESTATE ARRANGEMENT UNDER CHAPTER 12: OF NATIONAL BANKRUPTCY ACT.

CHILI HEIGHTS ASSOCIATES.

: BK-75-4635

Debter.

ORDER STAYING SUITS

AT ROCHESTER, NEW YORK, IN THE SAID DISTRICT, ON THE 5 DAY OF JANUARY, 1976.

Upon the annexed Petition of Chili Heights Associates, the above-named debtor, praying for a stay of suits against it; and it appearing that no notice of a hearing thereon should be given; and no adverse interest having been represented; and it further appearing that the rights of creditors will not be prejudiced by requiring an adjudication of their claims on the merits in this Court, it is

ORDERED, that all persons be, and they hereby are enjoined and stayed until final decree herein from commencing or continuing any suit against Chili Heights Associates, the above-named debtor, its nominee corporation, Chili Heights Apartments, Inc., including, without limitation, suits to enforce liens upon the subject properly and any suits involving guarantees by the individual partners pertaining thereto; it is

ORDERED that service by mail of this QRDER shall be deemed sufficient.

DATED: January 5 , 1976

U. S. Bankruptcy Judge

A11 MODIFIED ORDER STAYING SUITS, issued by Bankruptcy Judge, 1-29-76. UNITED SANIES MISEPICE COURT FOR THE WESTER. DISTRICT OF NEW YORK IN PROCEEDINGS FOR In the Matter of REAL PROPERTY ARRANGEMENT CHILI HEIGHTS ASSOCIATES, UNDER CHAPTER XII Debtor. BK-75-4018 MODIFIED ORDER STAYING SUITS AT ROCHESTER, NEW YORK, IN THE SAID DISTRICT, Upon the Petition of Lincoln First Bank of Rochester, dated the 5th day of January, 1976, and upon the petition of

Upon the Petition of Lincoln First Bank of Rochester, dated the 5th day of January, 1976, and upon the petition of Citibank (New York State) N.A., formerly Citibank (Mid-Western) N.A., and upon the petition of Security Trust Co., and upon an Order to Show Cause returnable on the 15th day of January, 1976, and notice of said hearing having been given as prescribed by this Court in its Order dated January 5, 1976, and after hearing Nixon, Hargrave, Devans & Doyle, attorneys for Lincoln First Bank of Rochester and Harris, Beach & Wilcox, attorneys for Security Trust Co. and Goldstein, Goldman, Kessler & Underberg, attorneys for Citibank, in favor of said Petitions, and Salamone & Aloi, attorneys for the debtor, Lacy, Katzen, Greene & Jones, attorneys for individual partners Frank Rizzo, Jerome C. Rosenthal, and Leonard Morris, appearing in opposition thereto.

NOW, upon all the proceedings had before me at the said hearing, it is,

MODIFIED ORDER STAYING SUITS, issued by Bankruptcy Judge, 1-29-76.

ORDERED that an earlier Order of this Court be modified to read as follows:

ORDERED that all persons be, and they hereby are enjoined and stayed until final decree herein from commencing or continuing any suit against Chili Heights Associates, the above-named debtor,

ORDERED that service by mail of this Order shall be deemed sufficient.

Dated: January 29, 1976

Edward D. Hayes

U. S. Bankruptcy Judge

A13 ORDER GRANTING TEMPORARY STAY, issued by United States District Judge, 2-5-76. UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK In the Matter of IN PROCEEDINGS FOR REAL PROPERTY ARRANGEMENT UNDER CHILI HEIGHTS ASSOCIATES. CHAPTER XIII Debtor. ORDER GRANTING TEMPORARY STAY Upon the annexed application of the individual partners of the above named debtor dated February 4, 1976 and upon the petition for reorganization under Chapter XII of the Bankruptcy Act heretofore filed herein, and sufficient cause appearing therefor, it is ORDERED, that the Order Staying Suits dated January 5. 1976 of Hon. Edward D. Hayes is hereby continued and the same is declared to be in full force and effect until the appeal of the January 29, 1976 order of Hon. Edward D. Hayes modifying said January 5, 1976 order is heard and determined and it is further, ORDERED, that all persons be and they hereby are stayed and enjoined from commencing or convinuing any suit against JEROME C. ROSENTHAL, ESQ., LEONARD MOPRIS, FSQ., ELIZABETH BAUER.

JOSEPH FAZIC, LEONARD ZACCAGLINO, FRANK RIZZO until the aforesaid appeal is determined.

Dated: 2/5/26

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In Re

CHILI HEIGHTS ASSOCIATES

ORDER TO SHOW CAUSE

BK-75-4635

Debtor.

ORDER TO SHOW CAUSE WHY THE ORDER SIGNED BY THIS COURT, HONORABLE HAROLD P. BURKE, DISTRICT JUDGE, ON FEBRUARY 5, 1976, SHOULD NOT BE MODIFIED.

At Rochester, New York in the Western District of New York on March $oldsymbol{1}$, 1976.

Upon the annexed application of William K. Shea, Vice President of Central Trust Company Rochester N.Y., dated March 1, 1976, and sufficient cause appearing therefore, it is

ORDERED, that on March . 1976 at 10 fin the United States Court House, 100 State Street, Rochester, New York, Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo shall show cause why the order of Honorable Harold P. Burke, District Judge, dated February 5, 1976 granting a temporary stay should not be modified so as to vacate the third and final paragraph of said order, and it is further

ORDIRED, that pending a locision of this Court upon this application and order, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard

A16

ORDER TO SHOW CAUSE, issued by United States District Judge, 3-1-76, including annexed application of William K. Shea and Exhibits.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In Re

CHILI HEIGHTS ASSOCIATES

APPLICATION

BF-75-4635

Debtor.

The application of William K. Shea respectfully shows:

- 1. He is a Vice President of Central Trust Company Rochester N.Y., the applicant herein, a domestic banking corporation with an office and principal place of business at 44 Exchange Street, Rochester, New York, and is familiar with the facts and circumstances hereafter set forth.
- 2. At various times in 1974 and 1975, Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo executed in their capacity as individuals a total of sixteen (16) notes whereby they agreed to pay applicant on demand the sum stated in each of the notes: copies of said notes, indicating the date of execution and amount of each note, are annexed hereto as Exhibit "A".
- 3. On December 18, 1975, applicant referred all of these notes to its attorneys for collection, and suits were immediately instituted in Supreme Court, Monroe County, New York, for the purpose of collecting the unpaid balances on these notes; these actions are presently pending.
- 4. Upon information and belief, all of the above named individuals are partners in Chili Heights Associates, and have at various times guaranteed the obligations of the partnership to financial institutions other than this applicant.
- 5. On or about January 5, 1976, Chili Heights Associates filed a petition under Chapter XII of the Bankruptcy Act with this Court; said petition was on behalf of the partnership only, and at no time have Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, or Frank Rizzo filed any petition with this Court in their individual capacities.

Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Prank Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Monroe County, New York against the above-named persons until the issues raised by this application and order to show cause are determined by this Court, and it is further

ORDERED, that service of a conformed copy of this order and application be made by delivering a copy to the law office of Lacy, Katzen, Green & Jones, attorneys for Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo, at 228 Plymouth Avenue, South, Rochester, New York, on or before March 2, 1976, and that such service shall be deemed good and sufficient.

Dated: March / , 1976

Rochester, New York

Harold P. Burke, United States
District Judge

- C. On January 5, 1976, an Order was issued by Honorable Edward D. Hayes, Bankruptcy Judge, which Order stays suits against Chili Heights Associates, Chili Heights Apartments, Inc., and suits involving guarantees of partnership indebtedness; a copy of said Order is attached hereto as Exhibit "B"; applicant believes that this Order in no way restrained or affected the actions previously commenced by applicant upon the lemand notes attached as Exhibit "A", and applicant continued to prosecute these actions.
- 7. On January 27, 1976, Honorable Edward D. Haves, Bankruptcy Judge, rendered a memorandum decision modifying the Order attached as Exhibit "B" to allow suits upon guarantees of the indebtedness of Chili Heights Associates.
- 8. On February 3, 1976, Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo filed a notice of appeal to the above mentioned memorandum decision.
- 9. On Pebruary 5, 1976, upon the application of the above mentioned persons, this Court issued an order granting a temporary stay pending an appeal of the above mentioned decision of Honorable Edward D. Hayes, Bankruptcy Judge; a copy of this Order is attached hereto as Exhibit "C".
- 10. By the terms of the Order attached as Exhibit "C", the previous Order of Honorable Edward D. Hayes, Bankruptcy Judge, has been expanded to stay the prosecution of any suit against Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo until the aforesaid appeal is determined.
- 11. As a result, applicant's actions upon the demand notes attached as Exhibit "A" nave been stayed, although these actions are unrelated to the obligations of Chili Heights Associates.
- 12. Applicant respectfully asserts that this Court is without jurisdiction to stay the actions previously commenced by the applicant, since the defendants in these actions have not filed petitions with this Court, and since these actions are unrelated to Chili Heights Associates, the only entity which has filed a petition with this Court.
- 13. The issue on this appeal, as stated in the statement filed with this Court pursuant to Rule 806 of the Rules of Bankruptcy Procedure, is "whether a stay enjoining suits against the debtor also stays suits against the individual partners of the debtor who have guaranteed loans"; applicant has no interest in this appeal, and wishes to continue its suits upon the individual demand notes attached as Exhibit "A".

Such other and further relief as to this Court seems

Applicant

Sludban K Shea

William K. Shea, Vice President

CENTRAL TRUST COMPANY ROCHESTER N.Y.

just and proper.

Dated: Rochester, New York March 1 , 1976 A19

ORDER TO SHOW CAUSE, issued by United States District Judge, 3-1-76, including annexed application of William K. Shea and Exhibits.

Woods, Oviatt, Gilman, Sturman & Clarke
By:

Attorneys for Applicant Office and Post Office Address: 44 Exchange Street Rochester, New York 14614 Tel: (716) 454-5370

STATE OF NEW YORK)
COUNTY OF MONROF) SS
CITY OF ROCHESTER)

I, WILLIAM K. SHEA, Vice President of Central Trust Company Rochester N.Y., the Applicant herein, have read the application, and do swear that the statements therein are true to the best of my knowledge, except those stated upon information and belief, and that as to those matters, I believe them to be true.

5/ William K Stream

Rochester, N.Y. July 3 75	К-83
On. Demand	\$ 4200,00
FOR VALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to	the
Order of Control Courses Pachester, N. T.	
Forty two hundred and *1/100 - Dollars	
at the CENTRAL TRUST COMPANY ROCHESTER N.Y.	
Together with reasonable aftorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall ascome immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or spon the insolvency, bankruptcy, death or in capacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
Each maker represents that the proceeds of this note will not be used for personal, family, household or agricult purposes.	D. L.
WITHINTEREST	N 826
FORM 10-8 (6/69)	100

FOR V	ALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the central frust company nuclester, N. ?	
	TRUST CO TO OU TO CIS Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable attorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
Each ma	ker represents that the proceeds of this note will not be used to personal, family, household or agricultural N Sure SIB STATERS, HILTON	(D.
WIT	HINTEREST O SUITE 518 STATERS HILTON	No. 20
FORM 1	0-8 (6/69) GUEFAIA 11 1/ 141200	1

EXHIBIT " " P.

FOR Older	VALUE RECEIVED the unconsidered maker(s), jointly and severally promise to pay to the Central Trust Central N. Y.	
	CENTRAL ZOOO AMONDE CIR Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable attorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
purpose	THINTEREST SUITE SIR STATLER HILLOW	(D. L.
1	10-8 (6/69) BUFFALO 111 Y 14202	No. 104

EXHIBIT ", " P.....of.

60 - 1 223 ORDER TO SHOW CAUSE, issued by United States District Judge, 3-1-76, including annexed application of William K. Shea and Exhibits.

OnDemand	Rochester, N.1. <u>11117 3</u> 1912	5 4/200
FOR VALUE RECEIVED the unders	igned maker(s), jointly and severally promise to pay to the scheeter, N. Y.	
CENTRAL/	200 10 CO TO Dollars	
at the CENTRAL TRUST COMPAN	Y ROCHESTER N.Y.	
referred to an attorney for collect shall become inmediately due and failure to pay either principal or i capacity, or commencement of a	is fees equal to 20% of the unpaid balance in the event this note is tion. In addition, if this note is not payable on demand, this note payable at the option of the holder without notice or demand upon interest when due, or upon the insolvency, bankruptcy, death or intractional proceeding or entry of judgment against any maker, enpon bank's sole determination that the prospect of payment is im-	
purposes. N	this note will not be used for personal, family, household or agricultural	D. L.
FORM 10-8 (6/59)	Denor Mins	N 320

EXHIBIT "A" P. of

	Rochester, N.Y. Yarch 7, 7!	
O:1	Denard .	\$ 7,250.00
FOR V	ALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the	
	Gentral Trust Company Rochester, N. Y.	
	CENTRAL Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable afterney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or incapacity, 0, commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
Each ma	ker represents that the proceeds of this note will not be used for personal, family, house sold or agricultural	/ D. L
	ON (6/69) 326 EAST GRIMSBY Rd	No. 687
	KENMORE N.Y.	1

EXHIBIT "F" P. 5. 01.

1 ...

ORDER TO SHOW CAUSE, issued by United States District Judge, 3-1-76, including annexed application of William K. Shea and Exhibits.

1 00	Demand Rochester, N.Y. April 30 - 9 7/1	K-8
"		\$ 10,000.00
	VALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the Central Irust Company Rochester, N. Y.	
	CENTRAL TO Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable aftorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
purpose	W at the a	D. L.
1	10-8 (6/69) Starketh (1/ Cosone	No. 102

EXHIBIT "A" P.

Ot	Demand	\$ 4/200
	ALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the	
-	TRUST CC 1200 TO TOTAL Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable afterney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
purposes	tker represents that the proceeds of this note will not be used for personal, family, household or agricultural N Lightwith HINTEREST	D. L.

ron ,	ALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the Central Trust Company Rochester, N. Y.	
Order o	ſ	
	CENTRAL TO Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable aftorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
Each ma	ker represents that the proceeds of this note will not be used for personal, family, household or agricultural	6

On_	Rochester, N.Y	k-0
FOR Order	VALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the	\$7,250.00
	TRUST CO P. C. C. Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable aftorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
Each ma	sker represents that the proceeds of this note will not be used for personal, family, household or agricultural	
WIT	HINTEREST STREET	690
FORM 1	0-8 (6/69) ROCHESTEE, 11 J. 14606	No.

50 - 1

FOR V	ALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the	
Order o	CENTRAL 1200 TO TO Dollars	
at the	CENTRAL TRUST COMPANY ROCHESTER N.Y.	
	Together with reasonable afterney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become immediately due and payable at the option of the holder without notice or demand upon	
	failure to pay either principal or interest when due, or upon the insolvency, bankruptcy, death or in- capacity, or commencement of attachment proceeding or entry of judgment against any maker, en- dorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is im- paired.	

V 50 - 1

ORDER TO SHOW CAUSE, issued by United States District Judge, 3-1-76, including annexed application of William K. Shea and Exhibits.

1	Rochester, N.Y. April 30, 19 71		K-02
On Demand		\$10,000,00	
FOR VALUE R	ECEIVED the undersigned maker(s), jointly and severally promise to pay to the ai Irust Company Rochester, N. Y.		
	CENTRAL TO THE PROPERTY DOLLARS		
at the CENTR	AL TRUST COMPANY ROCHESTER N.Y.		
referred to shall become failure to capacity, dorser, o paired.	with reasonable attorney's fees equal to 20% of the unpaid balance in the event this note is on anttorney for collection. In addition, if this note is not payable on demand, this note ime immediately due and payable at the option of the holder without notice or demand upon pay either principal or interest when due, or upon the insolvency, bankruptcy, death or increment of attachment proceeding or entry of judgment against any maker, enguarantor hereof, or upon bank's sole determination that the prospect of payment is im- nts that the proceeds of this note will not be used for personal, family, household or agricultural		
purposes. N	I sound gerestend	No. 699	b
FORM 10-8 (6/69)		1	-

LANIBIT " Posses of come

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Rochester, N.Y. July 3, 19 75	K 8½
On Demand	\$ 4200
FOR VALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the Order of	
at the CENTRAL TRUST COMPANY ROCHESTER N.Y.	
Together with reasonable attorney's fees equal to 20% of the unpaid balance in the event this note is referred to an attorney for collection. In addition, if this note is not payable on demand, this note shall become introductely due and payable at the option of the holder with at notice or demand upon failure to pay either principal or interest when due, or upon the insolvent, bankruptcy, death or incapacity, or commencement of attachment proceeding or entry of judgment against any maker, endorser, or guarantor hereof, or upon bank's sole determination that the prospect of payment is impaired.	
Each maker represents that the proceeds of this note will not be used for personal, family, household or agricultural purposes. N WITH INTEREST	822 No. 822
FORM 10-8 (6/69)	

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Rochester, N.Y. Tarch 7, 19 7	K-0]
On <u>Demand</u>	\$7.200.00
FOR VALUE RECEIVED the undersigned maker(s), jointly and severally promise to pay to the Order ofCentral Trust Company Rochester, N. Y.	
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Each maker represents that the proceeds of this note will not be used for personal, family, household or agricultural purposes. WITH INTEREST FORM 10-8 (6/69) 172 ELUIAR ST. 14606	No. 688

EXHIBIT "A" P.

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Each maker represents that the proceeds of this note will not be used for personal, family, household or agricultural purposes.	(D.
FORM 10-8 (6/69) FAIRPORT IN Y. 14450	No. 1 68

EXHIBIT " " P..... of.

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ž.	r represents that the proceeds of this note will not be used for personal, family, household or agricultural	

EXHIBIT "." P. ...

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

EXHIBIT "B"

In the Hatter of

IN PROCEEDINGS FOR REAL ESTATE ARRANGEMENT UNDER CHAPTER 12: OF NATIONAL BANKRUPTCY ACT.

CHILI HEIGHTS ASSOCIATES,

: BK-75-4635

Debtor.

ORDER STAYING SUITS

AT ROCHESTER, NEW YORK, IN THE SAID DISTRICT, ON THE 5 DAY OF JANUARY, 1976.

Upon the annexed Petition of Chili Heights Associates, the above-named debtor, praying for a stay of suits against it; and it appearing that no notice of a hearing thereon should be given; and no adverse interest having been represented; and it further appearing that the rights of creditors will not be prejudiced by requiring an adjudication of their claims on the merits in this Court, it is

ORDERED, that all persons be, and they hereby are enjoined and stayed until final decree herein from commencing or continuing any suit against Chili Heights Associates, the above-named debtor, its nominee corporation, Chili Heights Apartments, Inc., including without limitation, suits to enforce liens upon the subject property and any suits involving guarantees by the individual partners pertaining thereto; it is

ORDERED that service by mail of this GRDER shall be deemed

sufficient.

DATED: January 5 , 1976

U. S. Bankruptcy Judge

EXHIBIT "B"

A37 ORDER TO SHOW CAUSE, issued by United States District Judge, 3-1-76, including annexed application of William K. Shea and Exhibits. UNITED STATES DISTI IT COURT WESTERN DISTRICT OF NEW YORK In the Matter of IN PROCEEDINGS FOR REAL PROPERTY ARRANGEMENT UNDER CHILI HEIGHTS ASSOCIATES, CHAPTER XIII Debtor.

ORDER GRANTING TEMPORARY STAY

Upon the annexed application of the individual partners of the above named debtor dated February 4, 1976 and upon the petition for reorganization under Chapter XII of the Bankruptcy Act heretofore filed herein, and sufficient cause appearing therefor, it is

ORDERED, that the Order Staying Suits dated January 5, 1976 of Hon. Edward D. Hayes is hereby continued and the same is declared to be in full force and effect until the appeal of the January 29, 1976 order of Hon. Edward D. Hayes modifying said January 5, 1976 order is heard and determined and it is further,

ORDERED, that all persons be and they hereby are stayed and enjoined from commencing or continuing any suit against JEROME C. ROSENTHAL, ESQ., LEONARD MORRIS, ESQ., ELIZABETH BAUER, JOSEPH FAZIO, LEONARD ZACCAGLINO, FRANK RIZZO until the aforesaid appeal is determined.

Dated: 2/5/96

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 4-26-76, reversing 1-29-76 Order of Bankruptcy judge.

UNITED STRIES DISTRICT COURT WESTERN DISTRICT OF MESS YORK

In the Matter

of

CHILI MRIGHTS ASSOCIATES,

Debbor

EK-79-4635

PROCESSING UNDER

CHAPTER XII

Louis A. Ryon 236 Plymouth Avenue South Suchamber, N.Y. 14608 Attorney for Jerome C. Rosenthaul, Leonard Morris, Elizabeth Bower, Joseph P. Fazio, Leonard Encougling and Frank Risso

Herrin, Beach & Wilcox 2 State Street Rochester, N.Y. 14614 Attorneys for Security Trust Company

Coldstein, Coldman, Headler & Underborg 1800 Liscoln First Tower Rochester, H.Y. 14604 Attorneys for Citibank

Salamone & Alei 16 West Main Street Rowhester, H.Y. 14614 Attorneys for Chili Heights Associates

Hoods, Oviatt, Bilman, Sturman & Clarke 45 Exchange Street Pochester, S.Y. 14614 Attorneys for Central Trust Company

Mertin Bornstein 2922 Belamare Aveces Musière, H.Y. 14217 Etterney for individual partners of Chili Heights Associates ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 4-26-76, reversing 1-29-76 Order of Bankruptcy Judge.

This is an appeal by Frank Riese, Jerome C. Rosenthal, Leonard Morris, Elizabeth Bower, Joseph Fazio, and Leonard Secongline, partners of the School who guaranteed the leans of Chili Heights Apartments, Inc., from an order of the Benkruptmy Judge dated January 29, 1976 medifying his earlier order of January 5, 1976. The order opposied from ordered that the January 5, 1976 order be medified to read "OMPHRED that all persons be, and they hereby are, enjoined and stoped until final degree herein from commencing or continuing any smit against Chili Heights Associates, the above nemed debter. " The earlier order of the Bankruptcy judge dated January 5, 1976 erdored that all persons be enjoined until final decree from commoneing or continuing any suit against Chili Moights Associates, the debter, its seminee corporation, Chili Meights Apertments, Inc., including, without limitations, suits to enforce liens upon the subject property and any suits involving guarantees by the individual partners portaining thereto.

In a Chapter XXI proceeding the sourt has the authority to take measures to accure the debter a fair chance to achieve a weekable arrangement, Colonial mealty Investment Co. vs. Hartin, 516 F. 26, 154 (1 cir. 1975). To allow unsecured creditors to proceed with oute against Chili Heights Apartments, Inc., and governntors, would frustrate the power of the court to achieve a verkable arrangement.

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 4-26-76, reversing 1-29-76 Order of Bankruptcy Judge.

The modified order of January 29, 1976 appealed from is reversed. The order of January 5, 1976 is re-instated.

IT IS HEREST SO ORDERED.

HAROLD P. BUPKE United States District Judge

April 26, 1976.

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 5-10-76, determining the 3-1-76 Order to Show Cause.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter

of

BK-75-4635

CHILI HEIGHTS ASSOCIATES,

Debter

Woods, Oviatt, Gilman, Sturman & Clarke 45 Exchange Street Rochester, N.Y. 14614 Attorneys for Central Trust Company

Salamone & Aloi 36 West Main Street Rochester, W.Y. 14614 Attorneys for Chili Heights Associates

Louis A. Ryen
228 Plymouth Avenue South
Rochester, W.Y. 14608
Attorney for Jerome C. Rosenthal, Leonard Morris,
Elizabeth Bauer, Joseph F. Fazio, Leonard
Zaccaglino and Frank Rizzo

Morton Bornstein 2912 Delaware Avenue Kenmore, M.Y. 14217 Attorney for individual partners of Chili Heights Associates

Upon the application of Central Trust Company of Rochester, New York, dated March 1, 1976, this court ordered that on March 8, 1976 Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Fazio, Leonard Zaccaglino and Prank Rizzo show cause why the order of this court dated February 5, 1976 granting a temporary stay should not be

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 5-10-76, determining the 3-1-76 Order to Show Cause.

modified so as to vacate the third and final paragraph of the order and this court further ordered that pending a decision of this court upon this present application, the applicant was authorized to proceed in Supreme Court, Monroe County, New York, with its action upon demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Frank Rizzo, except that no judgment should be entered in any of the actions brought by applicant in the Supreme Court, Monroe County, against the above named persons until the issues raised by the application and order to show cause are determined by this court.

By order dated April 26, 1976 this court reversed on appeal the order of the Bankruptcy Judge Lited January 29, 1976 and reinstated the order of the Bankruptcy Judge dated January 5, 1976. On due consideration it is hereby

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March 1, 1976 ordering, that pending a decision of this court upon the application of Central Trust Company, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Pazio, Leonard Eaccaglino, and Frank Rizzo, except that no judgment shall be entered in any of the

ORDER AND DECISION OF UNITED-STATES DISTRICT JUDGE, 5-10-76, determining the 3-1-76 Order to Show Cause.

actions brought by applicant in Supreme Court, Monroe County, against the above named persons until the issues raised by the application are determined by this court, is hersby vacated and nullified.

HAROLD P. BURKE United States District Judge

May 10, 1976.

ORDER TO SHOW CAUSE OF UNITED STATES DISTRICT JUDGE, 5-26-76, requiring Central Trust Company Rochester N.Y. to show cause why State Court Judgments should not be vacated.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter

of

BK-75-4635

CHILI HEIGHTS ASSOCIATES,

Debtor

Morton Bornstein 2912 Delaware Avenue Kenmore, H.Y. 14217 Attorney for individual partners of Chili Heights Associates

Woods, Oviatt, Gilman, Sturmen & Clarke 45 Buchange Street Rochester, N.Y. 14614 Attorneys for Central Trust Company

Salamone & Alei 36 West Main Street Rochester, H.Y. 14614 Attorneys for Chili Heights Associates

Louis A. Ryon 228 Flywouth Avenue South Rochester, H.Y. 14608 Attorney for Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Pamie, Leonard Zaccagline and Frank Rizzo

by order dated May 10, 1976 this court "ORDERED that the order of this court dated March 1, 1976 ordering, that pending a decision of this court upon the application of Central Trust Company, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard

ORDER TO SHOW CAUSE OF UNITED STATES DISTRICT JUDGE, 5-26-76, requiring Central Trust Company Rochester N.Y. to show cause why State Court Judgments should not be vacated.

Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Prank Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Honroe County, against the above named persons until the issues raised by the application are determined by this court, is hereby vacated and sullified."

It appears that judgment has been entered against the individual owners of Chili Heights Associates by Central Trust Company.

Morton Bornstein, attorney for the individual partners, has delivered to my office today a written communication addressed to me bearing the date May 27, 1976. The communications was actually delivered to me today, May 26, 1976. He requests that this court make a supplemental order to the order of May 10, 1976 adding that Central Trust Company's authorisation to enter judgment is revoked and nullified and they should vacate and remove any such judgments entered forthwith and not beyond two days from May 27, 1976 and vacate their execution entered in Monroe County Clerk's Office against the property of Frank Risso, Jerome C. Rosenthal, Leonard Merris, Elizabeth Bauer, Joseph F. Pasio, and Leonard Eaccaglino, partners of Chili Heights Associates.

ORDER TO SHOW CAUSE OF UNITED STATES DIS-TRICT JUDGE, 5-26-76, requiring Central Trust Company Rochester N.Y. to show cause why State Court Judgments should not be vacated.

of Rochester show cause before this court at 12:00 noon on June 1, 1976 at the United States Court Mouse, Rochester, Mew York, why this court should not vacate the judgment against Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Pazio, Leonard Zaccagline, and Frank Risso, entered subsequent to the order of this court dated May 10, 1976. A copy of this order is being sent by mail today May 26, 1976 by this court to atterneys for central Trust Company which shall be deemed sufficient service on Central Erest Company, Rochester, New York, of a copy of this order.

MAROLD P. BURKE United States District Judge

May 26, 1976.

WESTERN DISTRICT OF NEW YORK		
In re) BX-75-4635	
CHILI HEIGHTS ASSOCIATES)) APPIDAVIT IN OPPOSITION	
-Debtor-	_j	
STATE OF NEW YORK) COUNTY OF MONROE) SS:		

PAUL S. GROSCHADL, being duly sworn, deposes and says:

- 1. I am an attorney admitted to practice before this Court, and am associated with Woods, Oviatt, Gilman, Sturman & Clarke, attorneys for Central Trust Company Rochester N.Y.; I am familiar with the facts and circumstances herein, and I make this affidavit in opposition to a motion brought on by an Order to Show Cause obtained by Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Fazio, Leonard Zaccaglino and Frank Rizzo, which Order requires Central Trust Company to show cause why this Court should not vacate the judgments entered by Central Trust Company against the above-named persons.
- 2. It is respectfully submitted that there is no order, stay or prohibition of this Court or of any other Court which prevents Central Trust Company from entering judgment against the above-named persons, and to the contrary, the orders of this Court have authorized Central Trust Company to take judgments; furthermore, there is no ground for a supplemental Order vacating the judgments.
- 3. In determining that no prohibition or stay existed at the time that Central Trust entered its judgments, nor since, it is necessary that the Orders entered in this proceeding be analyzed as to their effect upon Central Trust Company in chronological sequence:
- a. January 5, 1976: Honorable Edward D. Hayes, Bankruptcy Judge, issued an Order Staying Suits (attached as Exhibit "A"), which provides in relevant part:

ORDERED, that all persons be, and they hereby are enjoined and stayed until final decree herein from commencing or continuing any suit against Chili Heights Associates, the above-named debtor, its nominee corporation Chili Heights Apartments, Inc., including, without limitation, suits to enforce liens upon the subject property and any suits involving guarantees by the individual partners pertaining thereto;

Since Central Trust Company's suits were upon individual demand notes

(attached as Exhibit "B") executed by the defendants, and not against Chili Heights Associates, Chili Heights Apartments, Inc., or upon guarantees of the individual partners pertaining thereto, Central was unaffected by this Order and continued to prosecute its actions upon the demand notes.

- b. January 29, 1976: Judge Hayes issued an Order modifying his January 5 Order so as to permit suits involving guarantees by the individual partners. Again, Central was unaffected.
- c. February 5, 1976: This Court issued an Order Granting Temporary Stay (attached as Exhibit "C"), which continued the January 5 Order of Judge Hayes pending an appeal and further providing:

ORDERED, that all persons be and they hereby are stayed and enjoined from commencing or continuing any suit against Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, Frank Rizzo until the aforesaid appeal is determined.

This Order stayed the Central Trust Company suits upon the demand notes.

d. March 1, 1976: Pursuant to the application of Central Trust Company, this Court issued an Order to Show Cause (attached as Exhibit "D"), why Central should not be permitted to continue its suits upon the demand notes. This Order provided:

ORDERED, that pending a decision of this Court upon this application and order, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Prnak Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Monroe County, New York against the above-named persons until the issues raised by this application and order to show cause are determined by this Court.

Central Trust thereupon proceeded with its actions and obtained summary judgment, but did not enter judgment in any of the actions.

e. April 26, 1976: This Court issued an Order (attached as Exhibit "B") stating as follows:

The modified order of January 29, 1976 (b. above) appealed from is reversed. The order of January 5, 1976 (a. above) is reinstated. IT IS HEREBY SO ORDERED.

As previously stated, the Order of January 5, which has been re-instated

and is now of full force and effect, does not prohibit, stay, or in any way effect Central Trust's suits upon the demand notes. Furthermore, and of extreme significance, is the fact that the April 26 Order constitutes a determination of the appeal and thereby automatically vacates the February 5 Order Granting Temporary Stay Pending Appeal (c. above), which was the only Order which ever stayed the Central Trust suits.

Therefore, as of April 26, 1976, there has been no Order, stay, or prohibition of any Court which in any way affects the Central Trust suits.

f. May 10, 1976: This Court issued an Order (attached as Exhibit "F") which provides:

ORDERED that the order of this Court dated March 1, 1976 ordering, that pending a decision of this Court upon the application of Central Trust Company, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zomaglino, and Frank Rizzo, except that no judgment all be entered in any of the actions brought by applicant in Supreme Court, Monroe County, against the above named persons until the issues raised by this application are determined by this Court, is hereby vacated and nullified.

This Order further darifies the status of Central Trust Company, both at the time it entered its judgments on May 13, 1976, and at the present time, which is that there is but one Order to be examined in determining the rights of creditors of the partnership Chili Heights Associates, which has submitted to the jurisdiction of the Bankruptcy Court, and of the individual partners, who have not so submitted, to proceed, and that is the January 5 order of Judge Hayes (a. above and Exhibit "A" hereto). Since that Order does not affect Central Trust Company, the judgments were properly entered and they should not be vacated.

WHEREFORE, deponent respectfully requests an Order of this Court denying the motion to vactue the judgments entered by Central Trust Company Rochester N.Y. on May 13, 1976 in the Monroe County Clerk's Office against Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Fazio, Leonard Zaccaglino and Frank Rizzo, and directing that Central Trust Company Rochester N.Y. have immediate execution upon said judgments, and granting to Central Trust Company Rochester N.Y. such other and further relief as is just and proper, including the costs of this motion.

WOODS, OVIATT, GILMAN, STURMAN & CLARKE

Sworn to before me this day of May, 1976.

Paul S. Groschadl

MATTHEW M. GREENBLATT MoseryPublic, State of New York, Mooroogn My C mm-ssionExpires March 30, 1924

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter of

IN PROCEEDINGS FOR REAL ESTATE ARRANGEMENT UNDER CHAPTER 12: OF NATIONAL BANKRUPTCY ACT.

CHILI HEIGHTS ASSOCIATES,

: BK-75-4635

Debtor.

ORDER STAYING SUITS

AT ROCHESTER, NEW YORK, IN THE SAID DISTRICT, ON THE 5 DAY OF JANUARY, 1976.

Upon the annexed Petition of Chili Heights Associates, the above-named debtor, praying for a stay of suits against it; and it appearing that no notice of a hearing thereon should be given; and no adverse interest having been represented; and it further appearing that the rights of creditors will not be prejudiced by requiring an adjudication of their claims on the merits in this Court, it is

ORDERED, that all persons be, and they hereby are enjoined and stayed until final decree herein from commencing or continuing any suit against Chili Heights Associates, the above-named debtor, its nominee corporation, Chili Heights Apartments, Inc., including without limitation, suits to enforce liens upon the subject property and any suits involving guarantees by the individual partners pertaining thereto; it is

ORDERED that service by mail of this ORDER shall be deemed

sufficient.

DATED: January 5 , 1976

selected of Baylo

U. S. Bankruptcy Judge

	Rochester, N.Y. Tuly 3 1975	r ol
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WITH INTEREST CO	SUITE SIS STATURE HILTON	No. 103
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	Each maker represents that the proceeds of this note will not be used for personal, family, household or agricultural purposes.	(D. L.
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A57 AFFIDAVIT OF PAUL S. GROSCHADL, ESQ with Exhibits, 5-28-76, in Opposition to 5-26-76 Order to Show Cause. UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK In the Matter of IN PROCEEDINGS FOR REAL PROPERTY ARRANGEMENT UNDER CHILI HEIGHTS ASSOCIATES. CHAPTER XIII Debtor. ORDER GRANTING TEMPORARY STAY Upon the annexed application of the individual partners of the above named debtor dated February 4, 1976 and upon the petition for reorganization under Chapter XII of the Bankruptcy Act heretofore filed herein, and sufficient cause appearing therefor, it is ORDERED, that the Order Staying Suits dated January 5, 1976 of Hon. Edward D. Hayes is hereby continued and the same is declared to be in full force and effect until the appeal of the January 29, 1976 order of Hon. Edward D. Hayes modifying said January 5, 1976 order is heard and determined and it is further, ORDERED, that all persons be and they hereby are

stayed and enjoined from commencing or continuing any suit agains JEROME C. ROSENTHAL, ESQ., LEONARD MORRIS, ESQ., ELIZABETH BAUER, JOSEPH FAZIO, LEONARD ZACCAGLINO, FRANK RIZZO until the aforesaid appeal is determined.

Dated: 1/5/96

Exhibit "C"p. 1 of 1

UNITED STATES DISTRICT COURT
MESTERN DISTRICT OF NEW YORK

In Re

CHILI HEIGHTS ASSOCIATES

OPDER TO SHOW CAUSE

BK-75-4635

Debtor.

COURT TO SHOW CAUSE WHY THE ORDER SIGNED BY THIS COURT, HONORABLE ALOLD P. BURKE, DISTRICT JUDGE, ON PERRUARY 5, 1976, SUBJECT NOT BE MODIFIED.

At Pochester, New York in the Western District of New York on March $\frac{1}{2}$, 1976.

ORDERED, that on March &, 1976 at 10 fm in the United States Court Golse, 100 State Street, Rochester, New York, Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Raccaglino, and Frank Rizzo shall show cause why the order of Honorable Harold P. Burke, District Judge, dated February 5, 1976 granting a temporary stay should not be modified so as to vacate the third and final paragraph of said order, and it is further

ORDERED, that pending a decision of this Court upon this application and order, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard

Exhibit " P " p_ of 2

Morris, Elizabeth Bauer, Joseph Fazio, Leonard Maccaglino, and Frank Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Monroe County, New York against the above-named persons until the issues raised by this application and order to show cause are determined by this Court, and it is further

OPDERED, that service of a conformed copy of this order and application be made by delivering a copy to the law office of Lacy, Katzen, Green & Jones, attorneys for Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Pazio, Leonard Zaccaglino, and Frank Rizzo, at 228 Plymouth Avenue, South, Rochester, New York, on or before March 3, 1976, and that such service shall be deemed good and sufficient.

Dated: March / , 1976
Rochester, New York

Harold P. Burke, United States
District Judge

WHITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter

of

CHILI HEIGHTS ASSOCIATES,

Debtor

DX-75-4635

PROCESDING UNDER

CHAPTER XII

Louis A. Tyen
223 Plymouth Avenue South
Rochester, N.Y. 14603
Attorney for Jerome C. Rosenthaul, Leonard Morria,
Elizabeth Bauer, Joseph P. Fasio, Leonard
Jaccaglino and Frank Rizzo

Harris, Beach & Wilcox 2 State Street Pochester, N.Y. 14614 Attorneys for Security Trust Company

Goldstein, Coldman, Kessler & Underberg 1800 Lincoln First Tower Pochester, N.Y. 14604 Attorneys for Citibank

Salamone & Aloi 16 West Hain Street Rochester, H.Y. 14616 Attorneys for Chili Heights Associates

Woods, Cviatt, Gilman, Sturman & Clarks 45 Exchange Street Pochester, N.Y. 14614 Attorneys for Central Trust Company

Mortin Bornstein 2912 Delaware Avenue Kenmore, N.Y. 14217 Attorney for individual partners of Chili Heights Associates

This is an appeal by Frank Rizzo, Jerome C. osenthal, Leonard Morris, Blizabeth Bauer, Joseph Pazio, and Leonard Maccaglino, partners of the debtor who quaranteed the loans of Chili Meights Apartments, Inc., from an order of the Bankruptcy Judge dated January 29, 1976 modified and his earlier order of January 5, 1976. The order appreciad from ordered that the January 5, 1976 order be modified o read "ORDERED that all persons be, and they hereby are, enjoined and stayed until final decree herein from commencing or continuing any suit against Chili Heights Associates, the above massed debtor. The earlier order of the Bankruptry judge dated January 5, 1976 ordered that all persons be enjoined until final decree from commencing or continuing any suit against Chili Heights Associates, the debtor, its nomines corporation, Chili Heights Apartments, Inc., including, without limitations, suits to enforce liens upon the subject property and any suits involving quarantees by the individual partners pertaining thereto.

In a Chapter XII proceeding the court has the authority to take measures to assure the debtor a fair chance to achieve a workable arrangement, Colonial Realty Investment Co. vs. Martin, 516 P. 2d. 154 (1 cir. 1975). To allow unsecured creditors to proceed with suits against Chili Heights Apartments, Inc., and guarantors, would frustrate the power of the court to achieve a workable arrangement.

Exhibit " E " p 2 of 3

The modified order of January 29, 1976 appealed from is reversed. The order of January 5, 1976 is re-instated.

IT IS HEPERY SO ORDERED.

G. JA Barte

United States District Judge

April ____, 1976.

Exhibit " = " p. 3 013

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter

of

BK-75-4635

CHILI HEIGHTS ASSOCIATES,

Debtor

Woods, Oviatt, Gilmen, Sturman & Clarke 45 Exchange Street Rochester, N.Y. 14614 Attorneys for Central Trust Company

Salamone & Aloi 36 West Main Street Rochester, N.Y. 14614 Attorneys for Chili Heights Associates

Louis A. Ryen
228 Plymouth Avenue South
Rochester, N.Y. 14608
Attorney for Jerome C. Rosenthal, Leonard Morris,
Elizabeth Bauer, Joseph F. Fazio, Leonard
Zaccaglino and Frank Rizzo

Morton Bornstein 2912 Delaware Avenue Kenmore, N.Y. 14217 Attorney for individual partners of Chili Heights Associates

Upon the application of Central Trust Company of Rochester, New York, dated March 1, 1976, this court ordered that on March 8, 1976 Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Fazio, Leonard Zaccaglino and Frank Rizzo show cause why the order of this court dated February 5, 1976 granting a temporary stay should not be

Exhibit " /=" p. L of 3

modified so as to vacate the third and final paragraph of the order and this court further ordered that pending a decision of this court upon this present application, the applicant was authorized to proceed in Supreme Court, Monroe County, New York, with its action upon demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Frank Rizzo, except that no judgment should be entered in any of the actions brought by applicant in the Supreme Court, Monroe County, against the above named persons until the issues raised by the application and order to show cause are determined by this court.

By order dated April 26, 1976 this court reversed on appeal the order of the Bankruptcy Judge dated January 29, 1976 and reinstated the order of the Bankruptcy Judge dated January 5, 1976. On due consideration it is hereby

March 1, 1976 ordering, that pending a decision of this court upon the application of Central Trust Courty, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo, except that no judgment shall be entered in any of the

Exhibit # F ! p2 of 3



actions brought by applicant in Supreme Court, Monroe

County, against the above named persons until the issues
raised by the application are determined by this court,
is hereby vacated and nullified.

HAROLD P. BURKE United States District Judge

May 10 . 1976.

BEST COPY AVAILABLE

Exhibit " F" p.3 of3

OFFICIAL TRANSCRIPT OF PROCEEDING had in this matter on 6-1-76.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

In the Matter of)
CHILI HEIGHTS ASSOCIA	TES,) BK-75-4635
Debtor	r.)
Mile 5007 area 500 ar)

Transcript of proceedings had in the above-entitled matter, before the HON. HAROLD P. BURKE, United States District Judge, in the United States District Court, at Rochester, New York, on Tuesday, June 1, 1976.

APPEARANCES:

MORTON BORNSTEIN, ESQ. 2912 Delaware Avenue Kenmore, New York 14217

Appearing on behalf of the individual partners of Chili Heights Associates.

MESSRS. WOODS, OVIATT, GILMAN, STURMAN & CLARKE (By Paul S. Groschadl, Esq., Samuel P. Merlo, Esq., and Gary F. Amendola, Esq.) 44 Exchange Street Rochester, New York 14614

Appearing on behalf of Central Trust Company.

OFFICIAL TRANSCRIPT OF PROCEEDING had in this matter on 6-1-76.

Rochester, New York
Tuesday, June 1, 1976

THE COURT: All right, you may proceed.

MR. BORNSTEIN: Your Honor, I applied to you and gave you facts about the docketing of judgments that were enjoined by your order.

THE COURT: I issued an Order to Show Cause.

Did you secure that?

MR. BORNSTEIN: Pardon?

THE COURT: Did you secure the Order to Show Cause?

MR. BORNSTEIN: I gave Your Honor the basis for it, yes.

THE COURT: All right. Now you are making the motion here?

MR. BORNSTEIN: Yes, Your Honor.

THE COURT: Who are you representing?

MR. BORNSTEIN: Your Honor, I represent
Chili Heights Associates, attorney of record, substituted for Donald Salamone and also --

THE COURT: You weren't substituted at the time I signed the Order to Show Cause.

OFFICIAL TRANSCRIPT OF PROCEEDING had in this matter on 6-1-76.

MR. BORNSTEIN: Yes, I was, Your Honor. We filed it in the Bankruptcy Court.

THE COURT: When?

MR. BORNSTEIN: I can't recall, but before the time I came to you.

THE COURT: You applied to me as representing the individual partners.

MR. BORNSTEIN: And both -- I represent them also.

THE COURT: I mean you applied to me as representing the individual partners?

MR. BORNSTEIN: Yes, Your Honor.

Your Honor, I gave you the facts that we tried to vacate the judgments in State Court, and your letter, which you sent me, explaining that order, I included that as an Exhibit. And the State Supreme Court Judge would not read the letter.

THE COURT: I don't blame him. I won't, either. The letter couldn't change the order. That was for your personal information.

MR. BORNSTEIN: Yes, -Your Honor, so in order to explain my position, and to get a State Court to vacate, I used that letter as an Exhibit,

Your Honor .

THE COURT: Yes.

MR. BORNSTEIN: Then I felt that I should make application to your court, Your Honor, for an order so that I don't have to go back to State Court for an order vacating all the judgments that they laid on and the restraining orders that they placed on the property of the individual debtors.

And I would like Your Honor to issue an order.

THE COURT: All right. Make an application for an order.

I will hear your opponent.

MR. GROSCHADL: Your Honor, I am Paul Groschadl, and I am with the firm of Woods, Oviatt, and we are appearing for Central Trust Company.

a new development which may make this issue moot.

Within the past half-hour, Chili Heights Associates was adjudicated a bankrupt by Judge Hayes because of their failure to file an indemnity bond in accordance with his order. If Your Honor does not believe that makes this issue moot, we have further arguments

to present to the Court at this time in support -THE COURT: I will hear your further arguments.

MR. GROSCHADL: Yes, Your Honor.

First of all, there is no order, or stay, that now exists or existed at the time that Central Trust Company entered its judgments, which prevented the entry of those judgments. Contrary to that, Your Honor, the fact is that this Court has authorized the entry of those judgments.

THE COURT: By what order?

MR. GROSCHADL: There are two orders, Your Honor. On April 26th, you issued an order which reinstated --

THE COURT: Where is it? Do you have that order?

MR. GROSCHADL: It is attached to our motion papers, Your Honor. I hope to have that.

THE COURT: All right.

MR. GROSCHADL: That order reinstated the January 5 order of Judge Hayes. That January 5 order of Judge Hayes provides for a stay of suits against Chili Heights Associates, Chili Heights Apartments,

Inc., and suits upon guarantees by the individual partners of the partnership indebtedness.

The Central Trust Company suits upon which we have already entered judgment are based upon individual demand notes --

THE COURT: I understand that.

MR. GROSCHADL: And it is our position that the January 5 order in no way prevents us from entering judgment. That is the only order that exists at the present time, determining the rights of creditors of Chili Heights Associates or of the individual members of Chili Heights Associates.

If I may, Your Honor, chere have been six orders entered, and I think it is important at this point to take a look at each of those orders and how they affect Central Trust Company.

THE COURT: Let's take a look at the last one first.

MR. GROSCHADL: All right. The May 10, 1976, order is Paragraph 3(f) in our moving papers. In each paragraph we have cited what we think is the part of that order which affects the right of Central Trust Company to proceed.

The May 10th order says -THE COURT: That was my order.

MR. GROSCHADL: Yes, it was, Your Honor. The May 10th order provides as follows: "ORDERED, that the Order of this Court, dated March 1, 1976, ordering, that, pending a decision of this Court upon the application of Central Trust Company, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Frank Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Monroe County, against the above-named persons until the issues raised by the application are determined by this Court, is hereby vacated and nullified."

THE COURT: There isn't any question about it. That order vacated the order. What is the date of the order that is vacated?

MR. GROSCHADL: March 1, 1976.

THE COURT: So as of May 10th, there was no order. It was vacated. It was nullified.

MR. GROSCHADL: That's right, Your Honor, and the effect of that is that it leaves us with the January 5 order. And the January 5 order does not stay Central Trust Company, so we proceeded in accordance with your orders and the orders of Judge Hayes to enter our judgments on May 13th. We carefully examined all of the orders that had been entered in this proceeding and came to the conclusion there was no longer any prohibition which prevented the entry of judgment by Central Trust Company.

THE COURT: On May 10th when I made that order, at that time Central Trust had permission to continue their actions but not to enter judgment.

MR. GROSCHADL: That's correct.

THE COURT: That was by virtue of the order that was vacated.

MR. GROSCHADL: That's right, Your Honor.

THE COURT: Now the order was vacated so that left you without any permission to enter judgments, didn't it?

MR. GROSCHADL: Your Honor, we didn't need any permission to enter judgments, because the Bank-ruptcy Act doesn't prohibit us from entering judg-

ments. And the January 5 order of Judge Hayes authorizes the entry of judgments.

Our position is this, Your Honor: Unless the Bankruptcy Act or an order of this Court, or the Bankruptcy Court prohibits us from entering our judgments, then we are free to proceed in Supreme Court, and that is exactly what we did.

THE COURT: All right.

MR. GROSCHADL: I also notice, Your Honor, that Mr. Bornstein has requested a supplementary order at this time, vacating the judgments. If the basis of that order --

THE COURT: He asked me for that order, and instead of doing that, I issued an Order to Show Cause with notice to all parties. That was merely something that he submitted.

MR. GROSCHADL: All right, Your Honor.

I would just like to present our position with regard to what the law is on this.

Under Section 5 of the Bankruptcy Act, a partnership is distinct and separate from its individual members. The only way for individual

members of a partnership to get relief under the Bankruptcy Act --

THE COURT: Isn't that what I decided on the appeal?

MR. GROSCHADL: Yes, Your Honor, I believe it was, although, those specific words were not in your decision. We viewed that as being the implicit --

THE COURT: What you are arguing now is the appeal before me. I decided that.

MR. GROSCHADL: Your Honor, I don't want to have to argue the appeal over again, and I'm sure you don't want to hear it again.

THE COURT: We are both sure of it.

MR. GROSCHADL: Right, Your Honor, and what I want to do is make it clear to you that the judgments were properly entered, and there is no reason at all for them to be vacated at this time.

THE COURT: You sound as if it is an open and shut case. That is why I issued the Order to Show Cause, to hear your arguments. I didn't consider it open and shut.

MR. GROSCHADL: If I may, Your Honor, I will just analyze the six orders. You only let me

go through the last one.

THE COURT: All right.

MR. GROSCHADL: If I go through each one of them, I think it will appear that this is an open and shut case.

First of all, January 5, '76: The first order by Judge Hayes is in Paragraph 3a of our affidavit. That was the order that enjoined suits against Chili Heights Associates, Chili Heights Apartments, and suits upon guarantees of the partnership indebtedness. That order did not affect Central Trust Conpany.

January 29, 1976: The second order, and that was also issued by Judge Hayes, that modified the previous order to allow suits upon guarantees.

Again, Central Trust Company, with its demand notes, was unaffected by this order, and we continued our actions.

Then on February 5 the individual partners who wanted to appeal this January 29 order came to you, Your Ponor, and you issued an order which stated: "ORDERED, that all persons be and they bereby are stayed and enjoined from commencing or continuing

any suit against Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo, until the aforesaid appeal is determined."

And we are not a party to this appeal. We had nothing to do with the appeal. But this language in your order stayed our actions upon the demand notes. So as a result of that, we came into court, and on March 1st, we obtained an Order to Show Cause why that language shouldn't be taken out of the February 5th order to allow us to proceed.

So the fourth order, then, is the March 1, 1976, order. That is the order which allows us to proceed but not to enter judgment.

THE COUNT: That is the one I vacated.

MR. CROSCHADL: Yes, it is, Your Honor.

That's right.

Again, this was your order, Your Honor. You decided that the January 29 order, and that was the one by Jidge Hayes, which stated, "I will no longer enjoin suits upon guarantees," -- you reversed that, and you reinstated the January 5, 1976, order. By doing that you allowed Central Trust Company -- you took

away the prohibition against Central Trust Company's right to proceed and enter its judgments.

By reinstating the January 5 order, we were no longer stayed by any order of this Court or of the Bankruptcy Court, and furthermore, you determined the appeal. And by determining the appeal, you automatically vacated the temporary stay pending appeal, which was the only order that had ever been signed which stayed Central Trust Company. So, therefore, with that order out of the way, we were free to proceed and enter our judgments.

And, finally, the May 10th order: That was the order that vacated and nullified the March 1 order, and the result of that was it further clarified the fact that the only order to be looked at, both at the time that Central Trust Company entered its judgments and today is the January 5 order of Judge Hayes. The January 5 order of Judge Hayes in no way puts any restrictions upon the Central Trust Company actions, and it was because of this that we entered our judgments.

So, again, Your Honor, it is based upon analysis of those orders with regard to their effect

upon Central Trust Company that we come to the conclusion that the judgments were properly entered, and there is no reason that they should be vacated at this time.

THE COURT: All right.

MR. GROSCHADL: Thank you, Your Honor.

THE COURT: Do you want to say anything?

MR. BORNSTEIN: First, I would like to say that in the spirit of the Bankruptcy Act, we cannot have the distinction in the Bankruptcy Act and the rules that parthers aren't associates is nominal. It is not a substantive difference. If there are liabilities, the partnership doesn't create a new person, a new entity, to pay things. It is the individuals who pay them. So the argument that Section 50 of the National Bankruptcy Act makes a clear and very decisive dichotomy between individuals and the partnership is not relevant in a case or in a matter that is before this Court, which is quite obvious why.

Now when this Court tool jurisdiction and said, "All right, go shead --

THE COURT: I didn't say, "All right, go

ahead." I made an order.

through the order giving authorization to sue the individuals but not to enter the judgments. When that order of this Court was entered, they followed the order. When the order came down stating that that order was nullified, then they did not follow the order. It is quite clear they admit they entered the judgments. They didn't consider that your order said that the previous order was vacated and nullified. They interpreted it according to the way they wanted the result to come out.

I would like to bring to the Court's attention that if we have a situation where we are going to make fine and nice distinctions between individuals and partnerships and lose our attention on these niceties without become our eye on the thing at hand, the reason why we have a Chapter XII, the reason why we are in it, the reason why we are trying to rehabilitate the debtor, and if the courts cannot aid the debtor in rehabilitating binself, he has no chance to rehabilitate himself.

That is all, Your Honor.

diction --

THE COURT: Is this matter submitted now?

MR. GROSCHADL: Except for one point,

Your Honor. Mr. Bornstein has gone into the juris-

THE COURT: What I mean by that is are you going to file something more?

MR. GROSCHADL: We would like to file a brief on the jurisdictional point.

THE COURT: How long do you want?

MR. GROSCHADL: Ten days, please.

THE COURT: All right. You will reply to that brief?

MR. BORNSTEIN: Yes, Your Honor.

When would he have to serve me so I can
reply? Will you set that date?

THE COURT: he wants ten days to file it.

MR. GROSCHADL: I will take less than that,
even.

THE COURT: What?

MR. GROSCHADL: I will take five days, two days.

THE COURT: All right. You can have five days after that.

MR. BORNSTEIN: Thank you.

THE COURT: I'm going to mark the folder.

It is submitted, then, ten days from today.

MR. ECRNSTEIN: Thank you, Your Honor.

(Pause in the proceedings.)

THE COURT: Executions have issued on

these judgments?

MR. CROSCHADL: Yes, they have, Your Honor.

THE COURT: And levies have been made on

the bank accounts?

MR. GROSCHADL: That's right, Your Honor.

MR. AMENDOLA: May I correct that? I

am Gary Amendola, and I am also with Woods, Oviatt.

We represent Central Trust.

Restraining notices only have gone out.

THE COURT: Just a minute. Who do you

represent?

MR. AMENDOLA: Central Trust, Your Monor.

THE COURT: The is that gentleman (indi-

cating)?

MR. AMENDOLA: That is Mr. Croschadl,

Your Honor, and he represents Central Trust also.

THE COURT: Are there two people repre-

senting Central Trust?

MR. AMENDOLA: There are three, Your Honor.

THE COURT: And from the same law fire?

MR. AMENDOLA: Yes, Your Honor.

THE COURT: I will hear one spokesman, and not three.

MR. AMENDOLA: All right, Your Honor.

MR. GROSCHADL: I think this should be clarified. There are restraining notices that have been issued to the individual debtors, and there have been restraints that have gone out, but we haven't executed on anything.

THE COURT: Restraining letters?

MR. GROCCHADL: Restraining notices, that's correct, to banks, but we haven's executed on anything.

THE COURT: Wait a minute. The issued the restraining notice?

MR. GROSCHADL: Central Trust Company, pursuant to the judgments.

THE COURT: That isn't a process of the court. That is just voluntary. You asked them to withhold the executions?

MR. GROSCHADL: Yes, Your Honor. What we have done now, we have taken no further attempts to collect these judgments, pending your decision, Your Honor.

THE COURT: And I take it you will take none until this is decided?

MR. GROSCHADL: We would like to, Your Honor. We would like to collect these judgments.

THE COURT: That is what I want to know whether I am faced with staying it, or whether you consent to a stay until this motion is decided.

MR. GROSCHADL: We would request your permission to execute on these judgments.

THE COURT: I deny the motion. And I particularly stay anything further until I decide this motion.

MR. CROSCHADL: Yes, Your Honor.

THE COURT: Because it becomes moot if I don't do that.

MR. GROSCHADL: Yes, Your Honor.

THE COURT: All right. That is all.

REPORTER'S CERTIFICATE

I, A. Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

A. Jake Jacobson

Dated: Rochester, New York July 30, 1976 ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 7-21-76, vacating and nullifying sixteen judgments entered by Central Trust Company Rochester N.Y. on 5-13-76,

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

In the Matter

of

BK-75-4635

CHILI HEIGHTS ASSOCIATES,

Debtor

Morton Bornstein 2912 Delaware Avenue Kenmore, N.Y. 14217 Attorney for individual partners of Chili Heights Associates

Woods, Oviate, Gilman, Sturman & Clarke 45 Exchange Street Rochester, M.Y. 14614 Attorneys for Central Trust Company

Salamone & Aloi 36 West Main Street Rochester, N.Y. 14614 Attorneys for Chili Heights Associates

Louis A. Ryen
238 Plymouth Avenue South
Rochester, N.Y. 14608
Attorney for Jerome C. Rosenthal, Leonard Morris,
Elizabeth Bauer, Joseph F. Fazio, Leonard
Zaccaglino and Frank Rizzo

In late December of 1975 and early January of 1976, Central Trust Company, Rochester, New York, commenced three actions against Leonard Zaccaglino, three actions against Frank Riszo, three actions against Joseph F. Fazio, three actions against Elizabeth Bauer, two actions against Leonard Morris and two actions against Jerome C. Rosenthal. Each of

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 7-21-76, vacating and nullifying sixteen judgments entered by Central Trust Company Rochester N.Y. on 5-13-76.

these sixteen actions was based upon demand notes executed by the individual defendant. The judgments entered against the defendants in those actions are the subject of this proceeding.

On the application of Central Trust Company, Rochester, New York, dated March 1, 1976, this court,

"ORDERED, that on March 8, 1976 at 10:00 A.M. in the United States Courthouse, 100 State Street, Rochester, New York, Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Frank Rizzo show cause why the order of Honorable Harold P. Burke, District Judge, dated February 5, 1976 granting a temporary stay should not be modified so as to vacate the third and final paragraph of said order, and it is further

ORDERED, that pending a decision of this Court upon this application and order, the applicant is hereby authorized to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino, and Prank Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Monroe County, New York against the above-named persons until the issues raised by this application and order to show cause are determined by this Court."

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 7-21-76, vacating and nullifying sixteen judgments entered by Central Trust Company Rochester N.Y. on 5-13-76.

By order of this court dated May 10, 1976 this court.

"ORDERED that the order of this court dated March 1, 1976 ordering, that pending a decision of this court upon the application of Central Trust Company, the applicant is hereby authorised to proceed in Supreme Court, Monroe County, New York, with its actions upon the demand notes of Jerome C.

Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio,
Leonard Saccaglino, and Frank Rizzo, except that no judgment shall be entered in any of the actions brought by applicant in Supreme Court, Monroe County, against the above named persons until the issues raised by the application are determined by this court, is hereby vacated and nullified."

By order of this court dated May 26, 1976 this court,

show cause before this court at 12:00 noon on June 1, 1976 at the United States Court House, Rochester, New York, why this court should not vacate the judgments against Jerome C.

Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph F. Fazio,
Leonard Zaccaglino, and Frank Rismo, entered subsequent to the order of this court dated May 10, 1976. A copy of this order is being sent by mail today May 26, 1976 by this court to attorneys for Central Trust Company which shall be deemed

ORDER AND DECISION OF UNITED STATES DIS-TRICT JUDGE, 7-21-76, vacating and nullifying sixteen judgments entered by Central Trust Company Rochester N.Y. on 5-13-76.

sufficient service on Central Trust Company, Rochester, New York, of a copy of this order."

Central Trust Company, Rochester, New York, now alleges that this court is without jurisdiction to vacate the judgments that were entered. Central Trust Company sought permission of this court, as seen by the proceedings and orders of this court recited above, to proceed in Supreme Court, Monroe County, with its actions on the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Pazio, Leonard Zaccagline and Frank Risso.

In contravention of the order of this opert dated May 10, 1976 vacating and nutlifying the order of this court dated March 1, 1976, Central Trust Company, Rochester, New York, has entered judgments against the individual owners of Chili Heights Associates on the demand notes of the individual owners of Chili Heights Associates. On due consideration it is hereby

ORDERED that the judgments in the actions above referred to in favor of Central Trust Company, Rochester, New York, against Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Frank Rizzo are vacated and nullified on the ground that the judgments were entered in contravention of the order of this court dated May 10, 1976, which order vacated and nullified

ORDER AND DECISION OF UNITED STATES DISTRICT JUDGE, 7-21-76, vacating and nullifying sixteen judgments entered by Central Trust Company Rochester N.Y. on 5-13-76.

the order of this court dated March 1, 1976. The March 1, 1976 order had ordered that pending a decision of this court on the application of Central Trust Company, the applicant Central Trust Company, is hereby authorized to proceed in Supreme Court, Monroe County, with its actions on the demand notes of Jerome C. Rosenthal, Leonard Morris, Elizabeth Bauer, Joseph Fazio, Leonard Zaccaglino and Frank Rizzo, except that no judgment shall be entered in any of the actions brought by Central Trust Company, Rochester, New York, in Supreme Court, Monroe County, against the above named persons until the issues raised by the application of Central Trust Company are determined by this court.

Grad P. Bunti

HAROLD P. BURKE United States District Judge

July 2/. 1976.

BEST COPY AVAILABLE